

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3 STATE OF OKLAHOMA, ex rel,)
 4 W.A. DREW EDMONDSON, in his)
 capacity as ATTORNEY GENERAL)
 5 OF THE STATE OF OKLAHOMA,)
 et al.)
 6)
 Plaintiffs,)
 7)
 V.) No. 05-CV-329-GKF-SAJ
 8)
)
 9 TYSON FOODS, INC., et al.,)
)
 10 Defendants.)

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 13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 FEBRUARY 22, 2008

15 PRELIMINARY INJUNCTION HEARING

16 VOLUME IV

17
 18 BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

19
 20 APPEARANCES:

21 For the Plaintiffs: Mr. Drew Edmondson
 Attorney General
 22 Mr. Robert Nance
 Mr. Daniel Lennington
 23 Ms. Kelly Hunter Burch
 Mr. Trevor Hammons
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 25 Oklahoma City, Oklahoma 73105

Glen R. Dorrough
 UNITED STATES COURT REPORTER

EXHIBIT

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1 A. Yes.

2 MR. MCDANIEL: That's all the questions I have, Your
3 Honor. Thank you.

4 THE COURT: Mr. Page.

5 MR. PAGE: Nothing further, Your Honor.

6 THE COURT: You may be excused. This would be an
7 appropriate time to take a short recess. Let's break for about
8 10 minutes.

9 (Recess.)

10 THE COURT: Mr. Elrod.

11 MR. ELROD: Your Honor, in line with your previous
12 comment, it's my observation that shoveling crap makes you
13 appreciate being a lawyer.

14 THE COURT: Absolutely. Good experience.

15 MR. ELROD: I am. We'd call Dr. Herman Gibb, Your
16 Honor.

17 HERMAN JONES GIBB

18 Called as a witness on behalf of the defendants, being first
19 duly sworn, testified as follows:

20 THE COURT: State your full name for the record,
21 please.

22 THE WITNESS: Herman Jones Gibb.

23 MR. ELROD: Your Honor, with --

24 THE COURT: Mr. Elrod.

25 MR. ELROD: I'm sorry. Your Honor, with Dr. Gibb, we

1 think that the strength of the evidence is what they said here
2 in the call out and that is echoed again in the World Health
3 Organization report. Most experts will recognize that there is
4 a difference between animal and human when it comes to
5 evaluating risks as measured by indicator bacteria.

6 Q. Well, and the EPA said that there might be a difference
7 and it may be less, it may be greater, they don't know; right?

8 A. The EPA is a public health agency. They do what they can
9 to protect the public health and they'll be conservative in
10 that regard.

11 Q. Okay. And is that not appropriate when we're dealing with
12 public health to be conservative about it?

13 A. Oh, you know, it is conservative. In fact, that is the
14 stated position of the Environmental Protection Agency. They
15 say their risk assessments are conservative. They say that
16 front and center. However, trying to take that and translate
17 that to actual evidence of human disease or to make estimates
18 of human disease, that's where the science doesn't support it.

19 Q. All right. But in terms of a protective standard for
20 human health, that's what we have here according to the EPA for
21 the Enterococci and the E. coli; correct?

22 A. These are the -- this is what the ambient water quality
23 criteria is, I agree with that. But whether you can say that
24 you can get -- you're going to get eight out of a thousand and
25 that can apply to any particular situation where you have